



**FILED**

Sep 20 2008, 9:59 am

*Kevin L. Smith*

**CLERK**

of the supreme court,  
court of appeals and  
tax court

**RILEY, Judge**

## STATEMENT OF THE CASE

Appellant-Defendant, Joshua L. Schonefeld (Schonefeld), appeals his conviction for failure to stop after an accident resulting in damage to a vehicle driven or attended by a person, a Class C misdemeanor, Ind. Code §§ 9-26-1-2 and -9.

We affirm.

## ISSUES

Schonefeld presents two issues for our review, which we restate as:

- (1) Whether the trial court abused its discretion by admitting into evidence photographs of the victim's car taken seven months after the accident; and
- (2) Whether the State presented sufficient evidence to support Schonefeld's conviction.

## FACTS AND PROCEDURAL HISTORY

The evidence most favorable to the jury's verdict is as follows. On June 24, 2007, Heidi Wilder (Wilder) was stopped at a stoplight in Fort Wayne, Indiana. Her car was bumped from behind, so she rolled down her window to motion the other driver to a gas station parking lot. The other driver drove away. Wilder called 911 and began to follow the other driver. The 911 operator told Wilder that she should pull over, so she did. Officer Jack Barbour of the Fort Wayne Police Department (Officer Barbour) arrived on the scene, and he and Wilder looked at the damage to Wilder's vehicle, which consisted primarily of cracks in the paint on the rear bumper. As they were talking, the vehicle that had hit Wilder drove past. Officer Barbour followed the vehicle, driven by Schonefeld, and initiated a traffic stop.

When asked about the accident, Schonefeld told Officer Barbour that Wilder had backed into him. Officer Barbour issued Schonefeld a ticket for leaving the scene of an accident and allowed him to leave.

On June 27, 2007, the State filed an Information charging Schonefeld with failure to stop after an accident resulting in damage to a vehicle driven or attended by a person, a Class C misdemeanor, I.C. §§ 9-26-1-2 and -9. During a jury trial held on January 31, 2008, the State called Wilder as a witness and presented several pictures she had taken of her vehicle the previous day. Wilder testified that her vehicle looked the same in the pictures as it did following the accident on June 24, 2007. The State offered the photographs into evidence. Schonefeld's attorney objected, noting that the photographs had been taken seven months after the accident occurred and arguing that "they're just not timely." (Transcript p. 88). The State responded that the photographs were "a fair and accurate representation of the damage that was done to [Wilder's] car on June 24th, 2007." (Tr. p. 88). The trial court allowed the photographs into evidence, telling the parties that they could "argue the weight to be given to" them. (Tr. p. 88). Officer Barbour then testified that the photographs admitted into evidence fairly and accurately represented the damage to Wilder's car. Later, both Schonefeld and a passenger, Chelsea Graves (Graves), testified that Wilder had started rolling back toward their vehicle but that the vehicles did not make contact. The jury found Schonefeld guilty as charged.

Schonefeld now appeals. Additional facts will be provided as necessary.

## DISCUSSION AND DECISION

### *I. Admission of Photographs into Evidence*

Schonefeld first argues that the trial court should not have admitted the photographs Wilder took of her vehicle the day before trial into evidence. A trial court has broad discretion in ruling on the admissibility of evidence. *Fentress v. State*, 863 N.E.2d 420, 422-23 (Ind. Ct. App. 2007). Accordingly, we will reverse a trial court's ruling on the admissibility of evidence only when the trial court abuses its discretion. *Id.* at 423. An abuse of discretion occurs when a decision is clearly against the logic and effect of the facts and circumstances before the court. *Id.*

Schonefeld contends that the photographs should have been excluded pursuant to Indiana Evidence Rule 403, which provides: "Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, or needless presentation of cumulative evidence." Schonefeld emphasizes that the photographs were taken more than seven months after the accident and asserts that "[i]t is highly unlikely that the vehicle would look exactly the same all those months later. The car would have wear and tear from use during that time, and may have been damaged by any number of occurrences over a seven (7) month period." (Appellant's Br. p. 8). Schonefeld urges that "[t]he probative value of such unreliable evidence is therefore low, especially in comparison to the high prejudicial effect on the theory of the defense," which was that no collision actually occurred. (Appellant's Br. p. 9).

While the amount of time that passed between the accident and the photographs could certainly have been shorter, we cannot say that the trial court abused its discretion in admitting the photographs into evidence. Both Wilder and Officer Barbour testified that the photographs fairly and accurately represented Wilder's vehicle as it appeared after the incident on June 24, 2007. This testimony provided the necessary foundation for the admission of the photographs. *See Martin v. State*, 784 N.E.2d 997, 1007 (Ind. Ct. App. 2003), *reh'g denied, disagreed with on other grounds by Stewart v. State*, 866 N.E.2d 858 (Ind. Ct. App. 2007), and *Rutherford v. State*, 866 N.E.2d 867 (Ind. Ct. App. 2007). Moreover, we have held that the opportunity for changes before the taking of a photograph goes to the evidentiary weight of the photograph and not its admissibility. *Id.* The trial court recognized this, admitting the photographs into evidence but informing the parties that they could argue as to the weight to be given to them. The trial court did not abuse its discretion in doing so.

## II. *Sufficiency of Evidence*

Schonefeld also argues that the State failed to present sufficient evidence to support his conviction. In reviewing a sufficiency of the evidence claim, this court does not reweigh the evidence or judge the credibility of the witnesses. *Perez v. State*, 872 N.E.2d 208, 213-14 (Ind. Ct. App. 2007), *trans. denied*. We will consider only the evidence most favorable to the verdict and the reasonable inferences drawn therefrom and will affirm if the evidence and those inferences constitute substantial evidence of probative value to support the judgment.

*Id.* at 214. Reversal is appropriate only when reasonable persons would not be able to form inferences as to each material element of the offense. *Id.*

Indiana Code section 9-26-1-2 requires “[t]he driver of a vehicle involved in an accident that does not result in injury or death of a person or the entrapment of a person in a vehicle but that does result in damage to a vehicle that is driven or attended by a person” to immediately stop at the scene or as close to the accident as possible or return to and remain at the scene until driver information has been exchanged. Schonefeld’s defense is simple: he contends that there was no accident, so he had no duty to stop at or return to the scene. He notes that both he and Graves testified “that there was no actual accident and that they were both unaware of any contact between the two vehicles.” (Appellant’s Br. p. 10). But Wilder testified that Schonefeld *did* make contact with her vehicle and that the photographs portrayed the damage that was caused by that contact. In addition, Officer Barbour testified that Schonefeld admitted to him that the vehicles had made contact. Schonefeld’s request that we believe him instead of Wilder and Officer Barbour is nothing more than a prayer for us to judge the credibility of the witnesses, which we will not do. *Perez*, 872 N.E.2d at 213-14. We conclude that the State presented sufficient evidence to support Schonefeld’s conviction.

### CONCLUSION

Based on the foregoing, we conclude that the trial court did not abuse its discretion by admitting the photographs into evidence and that the State presented sufficient evidence to support Schonefeld’s conviction.

Affirmed.

BAILEY, J., and BRADFORD, J., concur.